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PATENTS
Attorney Docket No. 36119-126

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Carl June *et al.*
Serial No.: 09/027,205
Filing Date: February 20, 1998
Title: **Methods for Modulating Expression of an HIV-1 Fusion Cofactor**

Art Unit: 1644
Examiner: J. Roark

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NOV 12 2002

Assistant Commissioner for Patents
Washington, DC 20231

TECH CENTER 1600/2900

CERTIFICATION UNDER 37 C.F.R. § 1.10

I hereby certify that the attached papers are being deposited with the United States Postal Service as "Express Mail Post Office to Addressee" Service under 37 C.F.R. § 1.10 on the date indicated below and is addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231

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Date of Deposit

Rochelle Harper Greenidge
Rochelle Harper Greenidge

**DECLARATION UNDER 37 C.F.R. § 1.132
(In Re Katz Declaration)**

Dear Sir:

I, Carl H. June, M.D., declare the following:

1. As stated in my Declaration signed April 26, 2002, I am an applicant of the above-identified patent application (hereinafter "Application") and a co-inventor of the subject matter described and claimed therein. Specifically, I am the co-inventor, with Richard G. Carroll, Bruce L. Levine, James L. Riley, and Daniel C. St. Louis, of the subject matter described and claimed in this Application for the methods directed to downregulating HIV-1 fusion cofactor expression or downregulating CCR5 expression in a T cell, by contacting the T cell with a solid phase surface comprising an anti-CD28 antibody and an anti-CD3 antibody. I have reviewed the claims pending in this Application as of April 25, 2002, as well as those being proposed for Amendment in response to the Notice of Appeal filed April 9, 2002.

2. I am one of twelve co-authors of a journal article entitled "Antiviral effect and *ex vivo* CD4+ T cell proliferation in HIV-positive patients as a result of CD28 costimulation" by Bruce L. Levine, Joseph D. Mosca, James L. Riley, Richard G. Carroll, Maryanne T. Vahey, Linda L. Jagodzinski, Kenneth F. Wagner, Douglas L. Mayers, Donald S. Burke, Owen S. Weislow, Daniel St. Louis, and myself published in Levine *et al.*, *Science* 272:1939-1942 (June 28, 1996). The work described in the Levine *et al.* paper cited by the Examiner against this Application describes our own work.

3. James L. Riley, Richard G. Carroll, Bruce L. Levine, Daniel St. Louis, and I conceived of the work described in the Levine *et al.* paper, and supervised the remaining co-authors to perform this work under our direction. Specifically, all of the work performed by Bruce L. Levine (who contributed to the inventive concept of the invention claimed in the Application and thus is a named inventor on the Application) and James L. Riley (who contributed to the inventive concept of the invention claimed in the Application and thus is a named inventor on the Application) and reported in the Levine *et al.* paper was either conducted in my laboratory under my supervision and direction or conducted in the laboratories of either Richard G. Carroll, or Daniel St. Louis under their respective supervision and direction. Maryanne T. Vahey, Linda Jagodzinski, Joseph D. Mosca, and Owen S. Weislow performed work in their own laboratories under the direction and supervision of myself and the other co-inventors of the Application. Donald S. Burke was an administrator and provided financial support for some of the laboratory work. Kenneth F. Wagner and Douglas L. Mayers provided the clinical samples for use in the work reported in the Levine *et al.* paper under the direction and supervision of James L. Riley, Bruce L. Levine, Richard G. Carroll, Daniel St. Louis and/or myself.

4. While Joseph D. Mosca, Maryanne T. Vahey, Linda L. Jagodzinski, Kenneth F. Wagner, Douglas L. Mayers, Donald S. Burke, and Owen S. Weislow were named as co-authors for their technical assistance and contribution of financial support and/or clinical samples to the work described in the Levine *et al.* paper, they did not contribute to the conception of the

methods described and claimed in the Application and, thus, are not named as co-inventors of the Application.

5. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that the statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

11 Nov 02

Date

Carl H. June
Carl H. June, M.D.